

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SANTARUS, INC., a Delaware corporation,)	
and THE CURATORS OF THE)	
UNIVERSITY OF MISSOURI, a public)	
corporation and body politic of the State of)	
Missouri,)	
)	
Plaintiffs,)	C.A. No. 07-551 (GMS)
)	(CONSOLIDATED)
v.)	
)	
PAR PHARMACEUTICAL, INC., a Delaware)	
corporation,)	
)	
Defendant.)	

FINAL JOINT CLAIM CONSTRUCTION CHART

The parties have met and conferred, and present the following Joint Claim Construction Chart pursuant to paragraph 4 of the Court's Scheduling Order (D.I. 15). The parties' Joint Claim Construction Chart is attached as Exhibit A. This chart identifies the disputed claim terms in each patent, the parties' proposed constructions for the disputed claim terms, and the parties' respective identification of supporting intrinsic evidence for the proposed construction of each claim term.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ James W. Parrett, Jr.

Jack B. Blumenfeld (#1014)
James W. Parrett, Jr. (#4292)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899-1347
(302) 658-9200
jblumenfeld@mnat.com
jparrett@mnat.com

*Counsel for plaintiffs Santarus, Inc. and
The Curators of the University of Missouri*

*Of Counsel:
For plaintiff Santarus, Inc.:*

Morgan Chu
Gary Frischling
Lisa Partain
IRELL & MANELLA LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90067-4276
(310) 277-1010

*For plaintiff The Curators of the University
of Missouri:*

James R. Ferguson
Jamison E. Lynch
MAYER BROWN LLP
71 S. Wacker Drive
Chicago, IL 60606
(312) 782-0600

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RICHARDS, LAYTON & FINGER, P.A.

/s/ Steven J. Fineman

Frederick L. Cottrell (#2555)
Steven J. Fineman (#4025)
One Rodney Square
P.O. Box 551
Wilmington, DE 19899
(302) 651-7700
Cottrell@rlf.com
Fineman@rlf.com

Of Counsel:

Edgar H. Haug
James K. Stronski
FROMMER LAWRENCE & HAUG LLP
745 Fifth Avenue
New York, NY 10151
(212) 588-0800

Attorneys for Defendant

EXHIBIT A

U.S. Patent No. 6,489,346

'346 Claim Terms	Plaintiffs' Proposed Construction	Par's Proposed Construction	Plaintiffs' Support	Par's Support
Claim 24				
"solid pharmaceutical composition in a dosage form"	A solid dosage form that is pharmaceutically acceptable for storage, shipping, and administration, including a powder that can be combined with an aqueous medium and then orally administered	a solid preparation that is administered orally to the subject. Such a preparation would not include powders that are combined with a liquid prior to administration to the subject	'346 patent: 10:37-55; 11:24-33; 12:39-64; 15:3-46; 16:20-27 '346 patent: claims 50, 81 '885 patent: claim 3 U.S. Patent Application 09/183422 specification: 14:1-5; 14:14-22; 15:15-19; 24:10-16 plain meaning	'346 16:20-25; '988 14:9-14; '885 22:53-58; '882 17:9-14; PCT/US01/00796, p. 36, ll. 19-24; PCT/US99/25592, p. 26, l. 26-p. 27, l. 9. '737 10:29-30; '346 15:9-11; '988 12:60-62; '885 21:35-37; '882 15:61-63; U.S. Patent Application No. 09/183,422, Originally-Filed Specification, p. 23, ll. 19-21. '737 2:31-34; '346 7:30-33; '988 4:3-6; '885 4:25-28; '882 7:50-54; U.S. Patent Application No. 10/068,437, Originally-Filed Specification, p. 15. '346 10:48-51; '988 7:48-53; '885 8:3-8; '882 11:10-15; U.S. Patent Application No. 10/068,437, Originally-Filed

'346 Claim Terms	Plaintiffs' Proposed Construction	Par's Proposed Construction	Plaintiffs' Support	Par's Support
				<p>Specification, p. 22, ll. 26-32; PCT/US01/00796, p. 23, ll. 1-6.</p> <p>'346 15:20-23; '988 13:5-12; '885 21:45-53; '882 16:3-11; U.S. Application No. 09/183,422, Originally-Filed Specification, p. 24, ll. 10-18.</p> <p>U.S. Application No. 09/183,422, Originally-Filed Specification, p. 24, ll. 20-22; PCT/US99/25592, p. 27, ll. 2-4.</p> <p>'737 10:20-33; '346 15:3-13; '988 12:54-65; '885 21:29-40; '882 15:55-65; PCT/US99/25592, p. 25, l. 19-p. 26, l. 4.</p> <p>'885 56:24-30.</p> <p>U.S. Patent No. 6,489,346 File History November 26, 2001 Response, pp. 53, 56-57, 62.</p> <p>U.S. Patent No. 6,489,346 File History, June 25, 2001 Response, pp. 81-83, 85-87;</p>

'346 Claim Terms	Plaintiffs' Proposed Construction	Par's Proposed Construction	Plaintiffs' Support	Par's Support
				<p>U.S. Patent No. 6,489,346 File History July 3, 2001 Response, pp. 81-83, 85-87.</p> <p>U.S. Patent No. 6,489,346 File History, March 25, 2002 Response, pp. 43-44.</p> <p>U.S. Application No. 10/797,374 File History, October 31, 2007 Response, p. 10.</p> <p>U.S. Application No. 10/797,374, March 21, 2007 Response, pp. 17, 22-23.</p> <p>Ex Parte Reexamination Request No. 90/007,686 File History, September 13, 2006 Interview Summary.</p> <p>Ex Parte Reexamination Request No. 90/007,686 File History, May 24, 2006 Amendment, p. 13.</p>

'346 Claim Terms	Plaintiffs' Proposed Construction	Par's Proposed Construction	Plaintiffs' Support	Par's Support
Claim 57				
"solid pharmaceutical composition in a dosage form"	A solid dosage form that is pharmaceutically acceptable for storage, shipping, and administration, including a powder that can be combined with an aqueous medium and then orally administered	a solid preparation that is administered orally to the subject. Such a preparation would not include powders that are combined with a liquid prior to administration to the subject	<p>'346 patent: 10:37-55; 11:24-33; 12:39-64; 15:3-46; 16:20-27</p> <p>'346 patent: claims 50, 81</p> <p>'885 patent: claim 3</p> <p>U.S. Patent Application 09/183422 specification: 14:1-5; 14:14-22; 15:15-19; 24:10-16</p> <p>plain meaning</p>	<p>'346 16:20-25; '988 14:9-14; '885 22:53-58; '882 17:9-14; PCT/US01/00796, p. 36, ll. 19-24; PCT/US99/25592, p. 26, l. 26-p. 27, l. 9.</p> <p>'737 10:29-30; '346 15:9-11; '988 12:60-62; '885 21:35-37; '882 15:61-63; U.S. Patent Application No. 09/183,422, Originally-Filed Specification, p. 23, ll. 19-21.</p> <p>'737 2:31-34; '346 7:30-33; '988 4:3-6; '885 4:25-28; '882 7:50-54; U.S. Patent Application No. 10/068,437, Originally-Filed Specification, p. 15.</p> <p>'346 10:48-51; '988 7:48-53; '885 8:3-8; '882 11:10-15; U.S. Patent Application No. 10/068,437, Originally-Filed Specification, p. 22, ll. 26-32;</p>

'346 Claim Terms	Plaintiffs' Proposed Construction	Par's Proposed Construction	Plaintiffs' Support	Par's Support
				<p>PCT/US01/00796, p. 23, ll. 1-6.</p> <p>'346 15:20-23; '988 13:5-12; '885 21:45-53; '882 16:3-11; U.S. Application No. 09/183,422, Originally-Filed Specification, p. 24, ll. 10-18.</p> <p>U.S. Application No. 09/183,422, Originally-Filed Specification, p. 24, ll. 20-22; PCT/US99/25592, p. 27, ll. 2-4.</p> <p>'737 10:20-33; '346 15:3-13; '988 12:54-65; '885 21:29-40; '882 15:55-65; PCT/US99/25592, p. 25, l. 19-p. 26, l. 4.</p> <p>'885 56:24-30.</p> <p>U.S. Patent No. 6,489,346 File History November 26, 2001 Response, pp. 53, 56-57, 62.</p> <p>U.S. Patent No. 6,489,346 File History, June 25, 2001 Response, pp. 81-83, 85-87; U.S. Patent No. 6,489,346 File</p>

'346 Claim Terms	Plaintiffs' Proposed Construction	Par's Proposed Construction	Plaintiffs' Support	Par's Support
				<p>History July 3, 2001 Response, pp. 81-83, 85-87.</p> <p>U.S. Patent No. 6,489,346 File History, March 25, 2002 Response, pp. 43-44.</p> <p>U.S. Application No. 10/797,374 File History, October 31, 2007 Response, p. 10.</p> <p>U.S. Application No. 10/797,374, March 31, 2007 Response, pp. 17, 22-23.</p> <p>Ex Parte Reexamination Request No. 90/007,686 File History, September 13, 2006 Interview Summary.</p> <p>Ex Parte Reexamination Request No. 90/007,686 File History, May 24, 2006 Amendment, p. 13.</p>

'346 Claim Terms	Plaintiffs' Proposed Construction	Par's Proposed Construction	Plaintiffs' Support	Par's Support
Claim 90				
"combining the dosage form of claim 57 with an aqueous medium"	requires combination with a medium that includes water	requires combination with an aqueous medium prior to oral administration to the subject	'346 patent: 15:29-34; 16:20-27; 19:60-67 '346 patent: claim 94 U.S. Patent Application 09/183422 specification: 24:13-25:3 plain meaning	'346 (claim 57); '346 (claim 90). '346 15:3-13; '988 12:54-65; '885 21:29-40; '882 15:54-65. U.S. Patent Application Serial No. 09/183,422, Originally-Filed Specification, p. 24, l. 21-p. 25, l. 3; PCT/US99/25592, p. 27, ll. 3-9. PCT/US01/00796, p. 24, ll. 27-30.

U.S. Patent No. 6,645,988

'988 Claim Terms	Plaintiffs' Proposed Construction	Par's Proposed Construction	Plaintiffs' Support	Par's Support
Claim 29				
"solid oral pharmaceutical dosage form"	A solid dosage form that is pharmaceutically acceptable for storage, shipping, and oral administration, including a powder that can be combined with an aqueous medium and then orally administered	a solid preparation that is administered orally to the subject. Such a preparation would not include powders that are combined with a liquid prior to administration to the subject	<p>'988 patent: 7:36-55; 8:20-30; 9:40-49; 9:54-10:34; 12:54-62; 13:3-33; 14:9-16; 66-69 [esp. formulations 19-27]</p> <p>'988 patent: claim 29</p> <p>'346 patent: claims 50, 81</p> <p>'885 patent: claim 3</p> <p>U.S. Patent Application 09/183422 specification: 14:1-5; 14:14-22; 15:15-19; 24:10-16</p> <p>plain meaning</p>	<p>'346 16:20-25; '988 14:9-14; '885 22:53-58; '882 17:9-14; PCT/US01/00796, p. 36, ll. 19-24; PCT/US99/25592, p. 26, l. 26-p. 27, l. 9.</p> <p>'737 10:29-30; '346 15:9-11; '988 12:60-62; '885 21:35-37; '882 15:61-63; U.S. Patent Application No. 09/183,422, Originally-Filed Specification, p. 23, ll. 19-21.</p> <p>'737 2:31-34; '346 7:30-33; '988 4:3-6; '885 4:25-28; '882 7:50-54; U.S. Patent Application No. 10/068,437, Originally-Filed Specification, p. 15.</p> <p>'346 10:48-51; '988 7:48-53; '885 8:3-8; '882 11:10-15; U.S. Patent Application No. 10/068,437, Originally-Filed</p>

'988 Claim Terms	Plaintiffs' Proposed Construction	Par's Proposed Construction	Plaintiffs' Support	Par's Support
				<p>Specification, p. 22, ll. 26-32; PCT/US01/00796, p. 23, ll. 1-6.</p> <p>'346 15:20-23; '988 13:5-12; '885 21:45-53; '882 16:3-11; U.S. Application No. 09/183,422, Originally-Filed Specification, p. 24, ll. 10-18.</p> <p>U.S. Application No. 09/183,422, Originally-Filed Specification, p. 24, ll. 20-22; PCT/US99/25592, p. 27, ll. 2-4.</p> <p>'737 10:20-33; '346 15:3-13; '988 12:54-65; '885 21:29-40; '882 15:55-65; PCT/US99/25592, p. 25, l. 19-p. 26, l. 4.</p> <p>'885 56:24-30.</p> <p>U.S. Patent No. 6,489,346 File History November 26, 2001 Response, pp. 53, 56-57, 62.</p> <p>U.S. Patent No. 6,489,346 File History, June 25, 2001 Response, pp. 81-83, 85-87;</p>

'988 Claim Terms	Plaintiffs' Proposed Construction	Par's Proposed Construction	Plaintiffs' Support	Par's Support
				<p>U.S. Patent No. 6,489,346 File History July 3, 2001 Response, pp. 81-83, 85-87.</p> <p>U.S. Patent No. 6,489,346 File History, March 25, 2002 Response, pp. 43-44.</p> <p>U.S. Application No. 10/797,374 File History, October 31, 2007 Response, p. 10.</p> <p>U.S. Application No. 10/797,374, March 31, 2007 Response, pp. 17, 22-23.</p> <p>Ex Parte Reexamination Request No. 90/007,686 File History, September 13, 2006 Interview Summary.</p> <p>Ex Parte Reexamination Request No. 90/007,686 File History, May 24, 2006 Amendment, p. 13.</p>

'988 Claim Terms	Plaintiffs' Proposed Construction	Par's Proposed Construction	Plaintiffs' Support	Par's Support
"at least one optional Secondary Essential Buffer"	a buffering agent that is not required in every formulation, but which can be combined with Primary Essential Buffers to produce a higher pH and added neutralization capacity for the formulation	at least one buffer in addition to the recited primary essential buffer, where such additional buffer is unsuitable for use alone because it produces too high a pH value leading to gastrointestinal mucosal irritation	'988 patent: 8:16-18; 45:15-48:22; 55:52-55; 56:8-17; 59:30-60:10; 59-75 [esp. formulations 6, 8, 11-14, 16-18, 20, 22, 23, 28-36, 38, 39] '988 patent: 46:2; 46:7; 50:42; 51:3; 51:28; 51:42; 51:57; 52:22; 52:31; 52:46; 52:61; 58:67; 74:51 '988 patent: Claims 25-29 '988 file history: original claims at 123-25; February 1, 2002 Office Action; March 25, 2002 Interview Summary; July 11, 2002 Response at 2-18; September 25, 2002 Office Action; December 2, 2002 Response at 7-15; December 18, 2002 Supplemental Amendment at 3-6	U.S. Patent No. 6,645,988 File History, July 11, 2002 Response, p. 18. U.S. Patent No. 6,645,988 File History, December 2, 2002 Response, pp. 10-14. U.S. Patent No. 6,645,988 File History, July 11, 2002 Response, pp. 11-12. '988 46:56-60.

U.S. Patent No. 6,699,885

'885 Claim Terms	Plaintiffs' Proposed Construction	Par's Proposed Construction	Plaintiffs' Support	Par's Support
Claim 1				
"a solid oral pharmaceutical dosage form"	A solid dosage form that is pharmaceutically acceptable for storage, shipping, and oral administration, including a powder that can be combined	a solid preparation that is administered orally to the subject. Such a preparation would not include powders that are combined	'885 patent: 7:59-65; 7:66-8:11; 8:45-55; 9:46-51; 11:66-12:11; 14:45-55; 21:29-22:10; 22:53-60; 82-85 [esp. formulations 19-27] Reexamination 90/0067,686 Statement of Reasons for Patentability and/or	'346 16:20-25; '988 14:9-14; '885 22:53-58; '882 17:9-14; PCT/US01/00796 , p. 36, ll. 19-24; PCT/US99/25592 , p. 26, l. 26-p. 27, l. 9. '737 10:29-30;

'885 Claim Terms	Plaintiffs' Proposed Construction	Par's Proposed Construction	Plaintiffs' Support	Par's Support
	with an aqueous medium and then orally administered	with a liquid prior to administration to the subject	<p>Confirmation</p> <p>'885 patent: claim 3</p> <p>U.S. Patent Application 09/183422 specification, 14:1-5; 14:14-22; 15:15-19; 24:10-16</p> <p>plain meaning</p>	<p>'346 15:9-11; '988 12:60-62; '885 21:35-37; '882 15:61-63; U.S. Patent Application No. 09/183,422, Originally-Filed Specification, p. 23, ll. 19-21.</p> <p>'737 2:31-34; '346 7:30-33; '988 4:3-6; '885 4:25-28; '882 7:50-54; U.S. Patent Application No. 10/068,437, Originally-Filed Specification, p. 15.</p> <p>'346 10:48-51; '988 7:48-53; '885 8:3-8; '882 11:10-15; U.S. Patent Application No. 10/068,437, Originally-Filed Specification, p. 22, ll. 26-32; PCT/US01/00796, p. 23, ll. 1-6.</p> <p>'346 15:20-23; '988 13:5-12; '885 21:45-53; '882 16:3-11; U.S. Application No. 09/183,422, Originally-Filed Specification, p. 24, ll. 10-18.</p>

'885 Claim Terms	Plaintiffs' Proposed Construction	Par's Proposed Construction	Plaintiffs' Support	Par's Support
				<p>U.S. Application No. 09/183,422, Originally-Filed Specification, p. 24, ll. 20-22; PCT/US99/25592, p. 27, ll. 2-4.</p> <p>'737 10:20-33; '346 15:3-13; '988 12:54-65; '885 21:29-40; '882 15:55-65; PCT/US99/25592, p. 25, l. 19-p. 26, l. 4.</p> <p>'885 56:24-30.</p> <p>U.S. Patent No. 6,489,346 File History November 26, 2001 Response, pp. 53, 56-57, 62.</p> <p>U.S. Patent No. 6,489,346 File History, June 25, 2001 Response, pp. 81-83, 85-87; U.S. Patent No. 6,489,346 File History July 3, 2001 Response, pp. 81-83, 85-87.</p> <p>U.S. Patent No. 6,489,346 File History, March 25, 2002 Response, pp. 43-44.</p> <p>U.S. Application No. 10/797,374</p>

'885 Claim Terms	Plaintiffs' Proposed Construction	Par's Proposed Construction	Plaintiffs' Support	Par's Support
				<p>File History, October 31, 2007 Response, p. 10.</p> <p>U.S. Application No. 10/797,374, March 31, 2007 Response, pp. 17, 22-23.</p> <p>Ex Parte Reexamination Request No. 90/007,686 File History, September 13, 2006 Interview Summary.</p> <p>Ex Parte Reexamination Request No. 90/007,686 File History, May 24, 2006 Amendment, p. 13.</p>

'885 Claim Terms	Plaintiffs' Proposed Construction	Par's Proposed Construction	Plaintiffs' Support	Par's Support
Claim 3				
"mixing ... with an aqueous medium"	requires mixing with a medium that includes water	requires mixing with an aqueous medium prior to oral administration to the subject	<p>'885 patent: 9:66-11:5; 21:58-65; 22:53-60; 26-30 (esp. 30:40-41); 31:1-11; 59:44-52</p> <p>U.S. Patent Application 09/183422 specification 24:13-25:3</p> <p>plain meaning</p>	<p>'885 (claim 1); '885 (claim 3).</p> <p>U.S. Patent Application No. 09/183,422, Originally-Filed Specification, p. 24, l. 21-p. 25, l. 3; PCT/US99/2559 2, p. 27, ll. 3-9.</p> <p>'346 15:3-13; '988 12:54-65; '885 21:29-40; '882 15:54-65.</p> <p>PCT/US01/007 96, p. 24, ll. 27-30.</p>